

Greybill of HB 629

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING SUBDIVISION LAW; REVISING THE EXEMPTION FOR THE RENT OR LEASE OF BUILDINGS OR STRUCTURES OR PARTS OF BUILDINGS OR STRUCTURES; PROVIDING REVIEW PROCEDURES FOR THE RENT OR LEASE OF ~~MORE THAN THREE~~ CERTAIN BUILDINGS OR STRUCTURES; PROVIDING AN EXEMPTION FROM HEARING REQUIREMENTS; PROVIDING AN EXEMPTION FROM PARK DEDICATION REQUIREMENTS; ALLOWING A GOVERNING BODY TO EXEMPT CERTAIN BUILDINGS OR STRUCTURES FROM SUBDIVISION REVIEW; ALLOWING A GOVERNING BODY TO REVIEW CERTAIN BUILDINGS OR STRUCTURES IN THE SAME MANNER AS MAJOR SUBDIVISIONS; AMENDING SECTIONS 76-3-201, 76-3-204, 76-3-208, 76-3-504, 76-3-506, 76-3-605, ~~76-3-608~~, 76-3-620, 76-3-621, 76-6-203, AND 76-7-203, MCA; ~~AND~~ REPEALING SECTION 76-3-202, MCA; ~~AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AND PROVIDING AN EFFECTIVE DATE.~~"

WHEREAS, on March 5, 2010, the Montana Attorney General issued a draft opinion stating that section 76-3-204, MCA, which exempts certain actions from the requirements of the Montana Subdivision and Platting Act, "does not apply to the construction or conveyance of more than one building, structure, or improvement on a single tract of record"; and

WHEREAS, limiting the exemption in section 76-3-204, MCA, to a single building or structure places an undue burden on private property owners and an unreasonable restriction on the free use of property; and

WHEREAS, it is the intent of the Legislature to clarify that section 76-3-204, MCA, extends to more than one building or structure in certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Amendment 1

NEW SECTION. Section 1. Proposed rent or lease of certain buildings or structures. (1) The ~~EXCEPT AS PROVIDED IN SUBSECTION (2),~~ THE proposed rent or lease of buildings or structures or parts of buildings or

Amendment 2

structures that are not exempt from review under ~~76-2-204~~ 76-3-204 must be considered a subdivision and must be reviewed ~~IN THE SAME MANNER as provided in this section 76-3-609~~ THIS SECTION.

Amendment 3

(2) The governing body shall approve, conditionally approve, or deny a subdivision application under this section within 35 working days of a determination by the reviewing agent or agency that the application contains required elements and sufficient information for review. The determination and notification to the subdivider must be made in the same manner as provided in 76-3-604(1) through (3).

(3) The following requirements do not apply to subdivisions reviewed pursuant to this section:

- (a) the requirement to prepare an environmental assessment; and
- (b) the requirements of 76-3-621.
- (4) The governing body or its authorized agent or agency may not hold a public hearing or a subsequent public hearing under 76-3-615.
- (5) (a) The governing body may adopt regulations that establish requirements for the expedited review of subdivisions reviewed pursuant to this section.
- (b) Expedited review requirements must include the provisions of Title 76, chapter 4, part 1, whenever approval is required by those provisions.
- (6) (a) Review and approval, conditional approval, or denial of a subdivision under this chapter may occur only under those regulations in effect at the time that a subdivision application is determined to contain sufficient information for review as provided in subsection (2).
- (b) If regulations change during the period that the application is reviewed for required elements and sufficient information, the determination of whether the application contains the required elements and sufficient information must be based on the new regulations.
- ~~(7) A subdivision reviewed pursuant to this section may not be considered the first minor subdivision for purposes of 76-3-609.~~
- (2) A GOVERNING BODY MAY REVIEW SUBDIVISIONS FOR THE RENT OR LEASE OF SIX OR MORE BUILDINGS OR STRUCTURES IN THE SAME MANNER AS PROVIDED FOR MAJOR SUBDIVISIONS.
- ~~(8)~~(3) A governing body may establish a reasonable fee to be paid by the subdivider commensurate with the cost for reviewing a subdivision application pursuant to this section.

Section 2. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land -- fees for examination of division. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), is created to provide security for mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

- (d) creates cemetery lots;
 - (e) is created by the reservation of a life estate;
 - (f) is created by lease or rental for farming and agricultural purposes, including nonresidential agricultural-related structures;
 - (g) is in a location over which the state does not have jurisdiction; or
 - (h) is created for rights-of-way or utility sites. A subsequent change in the use of the land to a residential, commercial, or industrial use is subject to the requirements of this chapter.
- (2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.
- (3) An exemption under subsection (1)(b) applies:
- (a) to a division of land of any size;
 - (b) if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was given or to a purchaser upon foreclosure of the mortgage, lien, or trust indenture. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b) subjects the division of land to the requirements of this chapter.
 - (c) to a parcel that is created to provide security as provided in subsection (1)(b). The remainder of the tract of land is subject to the provisions of this chapter if applicable.
- (4) The governing body may examine a division of land to determine whether or not the requirements of this chapter apply to the division and may establish reasonable fees, not to exceed \$200, for the examination."

Section 3. Section 76-3-204, MCA, is amended to read:

"76-3-204. Exemption for ~~conveyances of one or more parts of a structure or improvement~~ rent or lease of buildings or structures or parts of buildings or structures. ~~(1) The sale, rent, or lease, or other conveyance of one or more buildings or structures or one or more parts of a building, structure, or other improvement buildings or structures, whether existing or proposed, on a single parcel of land or on multiple parcels of land in the same ownership is not a division of land, as that term is defined in this chapter 76-3-103, and is not subject to the requirements of this chapter. if:~~

~~—(1)(A) the parcel or parcels and the buildings or structures are in conformance with applicable local zoning regulations; or~~

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Amendment 4

~~(2)(B) EXCEPT AS PROVIDED IN SUBSECTION (4), where applicable local zoning regulations are not in effect:~~

~~(a)(i) the parcel or parcels resulted from a subdivision under parts 5 and 6 of this chapter and the subdivision application, preliminary plat, or other information reviewed by the governing body incorporated multiple buildings or structures on individual lots; OR~~

1) The rent or lease of one or more buildings or structures or one or more parts of buildings or structures, whether existing or proposed, on a single parcel of land or on multiple parcels of land in the same ownership is not a division of land, as that term is defined in 76-3-103, and is not subject to the requirements of this chapter if the parcel or parcels and the buildings or structures are in conformance with applicable local zoning regulations.

(2) Where applicable local zoning regulations are not in effect, the provisions of subsection (1) apply if:

(a) the parcel or parcels resulted from a subdivision under parts 5 and 6 of this chapter and the subdivision application, preliminary plat, or other information reviewed by the governing body incorporated multiple buildings or structures on individual lots; or

(b) the parcel or parcels did not result from a subdivision under parts 5 and 6 of this chapter and there are no more than four buildings or structures designed for use as dwellings or places of business including the parcel owner's primary residence or the buildings or structures do not have sewage disposal facilities.

~~(b)(ii) (A)(i) there are no more than three four single dwelling structures BUILDINGS OR STRUCTURES DESIGNED FOR USE AS DWELLINGS OR PLACES OF BUSINESS in addition to including the parcel owner's primary residence; OR~~

~~(c)(Bii) the buildings or structures do not have sewage disposal facilities; or~~

~~(d) the buildings or structures are intended:~~

~~(i) for rental as storage units; or~~

~~(ii) for a single agricultural operation.~~

(2) FOR PURPOSES OF THIS SECTION, "DWELLING" MEANS A HABITABLE RESIDENTIAL STRUCTURE, INCLUDING A MOBILE HOME OR RECREATIONAL VEHICLE, AND DOES NOT INCLUDE A PLACE OF BUSINESS.

(3) (A) EXEMPTIONS FOR A DWELLING OR PLACE OF BUSINESS AS PROVIDED IN THIS SECTION MUST BE COUNTED AS FOLLOWS:

(I) A SINGLE DWELLING OR PLACE OF BUSINESS MUST BE COUNTED AS ONE EXEMPTION;

(II) A DUPLEX, WHETHER A DWELLING OR A PLACE OF BUSINESS, MUST BE COUNTED AS TWO EXEMPTIONS;

(III) A TRIPLEX, WHETHER A DWELLING OR A PLACE OF BUSINESS, MUST BE COUNTED AS THREE EXEMPTIONS;

(iv) a fourplex, whether a dwelling or a place of business, must be counted as four exemptions;

AND

~~(IV)(v) ANY BUILDINGS OR STRUCTURES THAT CONTAIN MORE THAN THREE-FOUR DWELLINGS, PLACES OF BUSINESS, OR DWELLINGS AND PLACES OF BUSINESS IN COMBINATION MUST BE REVIEWED PURSUANT TO [SECTION 1].~~

Amendment 5

Amendment 6

Amendment 7

(B) ~~AN~~ THE EXEMPTION ALLOWS FOR FOUR BUILDINGS OR STRUCTURES ON ~~FOR A~~ TRACT OF RECORD WHICH RUNS WITH THE LAND INDEPENDENT OF FURTHER DIVISIONS OF OR USE OF EXEMPTIONS FOR THE TRACT.

Amendment 8

(4) A GOVERNING BODY MAY ADOPT REGULATIONS EXEMPTING MORE THAN ~~THREE~~ FOUR BUILDINGS OR STRUCTURES IN ADDITION TO THE PARCEL OWNER'S PRIMARY RESIDENCE FROM THE REQUIREMENTS OF THIS CHAPTER."

Section 4. Section 76-3-208, MCA, is amended to read:

"76-3-208. Subdivisions exempted from surveying and filing requirements but subject to review provisions.

Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this chapter but must be submitted for review pursuant to [section 1] and approved by the governing body before portions thereof of the subdivision may be rented or leased."

Section 5. Section 76-3-504, MCA, is amended to read:

"76-3-504. Subdivision regulations -- contents. (1) The subdivision regulations adopted under this chapter must, at a minimum:

- (a) list the materials that must be included in a subdivision application in order for the application to be determined to contain the required elements for the purposes of the review required in 76-3-604(1);
- (b) except as provided in 76-3-509, 76-3-609, ~~or~~ 76-3-616, or [section 1], require the subdivider to submit to the governing body an environmental assessment as prescribed in 76-3-603;
- (c) establish procedures consistent with this chapter for the submission and review of subdivision applications and amended applications;
- (d) prescribe the form and contents of preliminary plats and the documents to accompany final plats;
- (e) provide for the identification of areas that, because of natural or human-caused hazards, are unsuitable for subdivision development. The regulations must prohibit subdivisions in these areas unless the hazards can be eliminated or overcome by approved construction techniques or other mitigation measures authorized under 76-3-608(4) and (5). Approved construction techniques or other mitigation measures may not include building regulations as defined in 50-60-101 other than those identified by the department of labor and industry as provided in 50-60-901.
- (f) prohibit subdivisions for building purposes in areas located within the floodway of a flood of 100-year frequency, as defined by Title 76, chapter 5, or determined to be subject to flooding by the governing body;
- (g) prescribe standards for:

- (i) the design and arrangement of lots, streets, and roads;
- (ii) grading and drainage;
- (iii) subject to the provisions of 76-3-511, water supply and sewage and solid waste disposal that meet the:
 - (A) regulations adopted by the department of environmental quality under 76-4-104 for subdivisions that will create one or more parcels containing less than 20 acres; and
 - (B) standards provided in 76-3-604 and 76-3-622 for subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres; and
- (iv) the location and installation of public utilities;
- (h) provide procedures for the administration of the park and open-space requirements of this chapter;
- (i) provide for the review of subdivision applications by affected public utilities and those agencies of local, state, and federal government identified during the preapplication consultation conducted pursuant to subsection (1)(q) or those having a substantial interest in a proposed subdivision. A public utility or agency review may not delay the governing body's action on the application beyond the time limits specified in this chapter, and the failure of any agency to complete a review of an application may not be a basis for rejection of the application by the governing body.
- (j) when a subdivision creates parcels with lot sizes averaging less than 5 acres, require the subdivider to:
 - (i) reserve all or a portion of the appropriation water rights owned by the owner of the land to be subdivided and transfer the water rights to a single entity for use by landowners within the subdivision who have a legal right to the water and reserve and sever any remaining surface water rights from the land;
 - (ii) if the land to be subdivided is subject to a contract or interest in a public or private entity formed to provide the use of a water right on the subdivision lots, establish a landowner's water use agreement administered through a single entity that specifies administration and the rights and responsibilities of landowners within the subdivision who have a legal right and access to the water; or
 - (iii) reserve and sever all surface water rights from the land;
- (k) (i) except as provided in subsection (1)(k)(ii), require the subdivider to establish ditch easements in the subdivision that:
 - (A) are in locations of appropriate topographic characteristics and sufficient width to allow the physical placement and unobstructed maintenance of open ditches or belowground pipelines for the delivery of water for irrigation to persons and lands legally entitled to the water under an appropriated water right or permit of an irrigation district or other private or public entity formed to provide for the use of the water right on the subdivision lots;

(B) are a sufficient distance from the centerline of the ditch to allow for construction, repair, maintenance, and inspection of the ditch; and

(C) prohibit the placement of structures or the planting of vegetation other than grass within the ditch easement without the written permission of the ditch owner.

(ii) Establishment of easements pursuant to this subsection (1)(k) is not required if:

(A) the average lot size is 1 acre or less and the subdivider provides for disclosure, in a manner acceptable to the governing body, that adequately notifies potential buyers of lots that are classified as irrigated land and may continue to be assessed for irrigation water delivery even though the water may not be deliverable; or

(B) the water rights are removed or the process has been initiated to remove the water rights from the subdivided land through an appropriate legal or administrative process and if the removal or intended removal is denoted on the preliminary plat. If removal of water rights is not complete upon filing of the final plat, the subdivider shall provide written notification to prospective buyers of the intent to remove the water right and shall document that intent, when applicable, in agreements and legal documents for related sales transactions.

(l) require the subdivider, unless otherwise provided for under separate written agreement or filed easement, to file and record ditch easements for unobstructed use and maintenance of existing water delivery ditches, pipelines, and facilities in the subdivision that are necessary to convey water through the subdivision to lands adjacent to or beyond the subdivision boundaries in quantities and in a manner that are consistent with historic and legal rights;

(m) require the subdivider to describe, dimension, and show public utility easements in the subdivision on the final plat in their true and correct location. The public utility easements must be of sufficient width to allow the physical placement and unobstructed maintenance of public utility facilities for the provision of public utility services within the subdivision.

(n) establish whether the governing body, its authorized agent or agency, or both will hold public hearings;

(o) establish procedures describing how the governing body or its agent or agency will address information presented at the hearing or hearings held pursuant to 76-3-605 and 76-3-615;

(p) establish criteria that the governing body or reviewing authority will use to determine whether a proposed method of disposition using the exemptions provided in 76-3-201 or 76-3-207 is an attempt to evade the requirements of this chapter. The regulations must provide for an appeals process to the governing body if the reviewing authority is not the governing body.

(q) establish a preapplication process that:

(i) requires a subdivider to meet with the authorized agent or agency, other than the governing body, that is designated by the governing body to review subdivision applications prior to the subdivider submitting the application;

(ii) requires, for informational purposes only, identification of the state laws, local regulations, and growth policy provisions, if a growth policy has been adopted, that may apply to the subdivision review process;

(iii) requires a list to be made available to the subdivider of the public utilities, those agencies of local, state, and federal government, and any other entities that may be contacted for comment on the subdivision application and the timeframes that the public utilities, agencies, and other entities are given to respond. If, during the review of the application, the agent or agency designated by the governing body contacts a public utility, agency, or other entity that was not included on the list originally made available to the subdivider, the agent or agency shall notify the subdivider of the contact and the timeframe for response.

(iv) requires that a preapplication meeting take place no more than 30 days from the date that the authorized agent or agency receives a written request for a preapplication meeting from the subdivider; and

(v) establishes a time limit after a preapplication meeting by which an application must be submitted as provided in 76-3-604;

(r) requires that the written decision required by 76-3-620 must be provided to the applicant within 30 working days following a decision by the governing body to approve, conditionally approve, or deny a subdivision.

(2) In order to accomplish the purposes described in 76-3-501, the subdivision regulations adopted under 76-3-509 and this section may include provisions that are consistent with this section that promote cluster development.

(3) The governing body may establish deadlines for submittal of subdivision applications.

(4) A GOVERNING BODY THAT ADOPTS SUBDIVISION REGULATIONS EXEMPTING MORE THAN THREE BUILDINGS OR STRUCTURES AS PROVIDED IN 76-3-204 SHALL STATE THE NUMBER OF BUILDINGS OR STRUCTURES EXEMPTED FROM REVIEW."

Section 6. Section 76-3-506, MCA, is amended to read:

"76-3-506. Provision for granting variances. (1) Subdivision regulations may authorize the governing body, after a public hearing on the variance request before the governing body or its designated agent or agency, to grant variances from the regulations when strict compliance will result in undue hardship and when it is not essential to the public welfare.

(2) Any variance granted pursuant to this section must be based on specific variance criteria contained in the subdivision regulations.

(3) A minor subdivision as provided for in 76-3-609(2) or a subdivision reviewed pursuant to [section 1] is not subject to the public hearing requirement of this section."

Section 7. Section 76-3-605, MCA, is amended to read:

"76-3-605. Hearing on subdivision application. (1) Except as provided in 76-3-609, and 76-3-616, and [section 1] and subject to the regulations adopted pursuant to 76-3-504(1)(o) and 76-3-615, at least one public hearing on the subdivision application must be held by the governing body, its authorized agent or agency, or both and the governing body, its authorized agent or agency, or both shall consider all relevant evidence relating to the public health, safety, and welfare, including the environmental assessment if required, to determine whether the subdivision application should be approved, conditionally approved, or denied by the governing body.

(2) When a proposed subdivision is also proposed to be annexed to a municipality, the governing body of the municipality shall hold joint hearings on the subdivision application and annexation whenever possible.

(3) Notice of the hearing must be given by publication in a newspaper of general circulation in the county not less than 15 days prior to the date of the hearing. The subdivider, each property owner of record whose property is immediately adjoining the land included in the preliminary plat, and each purchaser under contract for deed of property immediately adjoining the land included in the preliminary plat must also be notified of the hearing by registered or certified mail not less than 15 days prior to the date of the hearing.

(4) When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or denial of the proposed subdivision. This recommendation must be submitted to the governing body in writing not later than 10 working days after the public hearing."

~~Section 8.~~ Section 76-3-608, MCA, is amended to read:

~~"76-3-608. Criteria for local government review.~~ (1) The basis for the governing body's decision to approve, conditionally approve, or deny a proposed subdivision is whether the subdivision application, preliminary plat, applicable environmental assessment, public hearing, planning board recommendations, or additional information demonstrates that development of the proposed subdivision meets the requirements of this chapter. A governing body may not deny approval of a proposed subdivision based solely on the subdivision's impacts on educational services.

~~—(2) The governing body shall issue written findings of fact that weigh the criteria in subsection (3), as applicable.~~

~~—(3) A subdivision proposal must undergo review for the following primary criteria:~~

~~—(a) except when the governing body has established an exemption pursuant to subsection (6) of this section or except as provided in 76-3-509, 76-3-609(2) or (4), or 76-3-616, or [section 1], the impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife, wildlife habitat, and public health and safety;~~

~~—(b) compliance with:~~

~~—(i) the survey requirements provided for in part 4 of this chapter;~~

~~—(ii) the local subdivision regulations provided for in part 5 of this chapter; and~~

~~—(iii) the local subdivision review procedure provided for in this part;~~

~~—(c) the provision of easements within and to the proposed subdivision for the location and installation of any planned utilities; and~~

~~—(d) the provision of legal and physical access to each parcel within the proposed subdivision and the required notation of that access on the applicable plat and any instrument of transfer concerning the parcel.~~

~~—(4) The governing body may require the subdivider to design the proposed subdivision to reasonably minimize potentially significant adverse impacts identified through the review required under subsection (3). The governing body shall issue written findings to justify the reasonable mitigation required under this subsection (4).~~

~~—(5) (a) In reviewing a proposed subdivision under subsection (3) and when requiring mitigation under subsection (4), a governing body may not unreasonably restrict a landowner's ability to develop land, but it is recognized that in some instances the unmitigated impacts of a proposed development may be unacceptable and will preclude approval of the subdivision.~~

~~—(b) When requiring mitigation under subsection (4), a governing body shall consult with the subdivider and shall give due weight and consideration to the expressed preference of the subdivider.~~

~~—(6) A governing body may conditionally approve or deny a proposed subdivision as a result of the water and sanitation information provided pursuant to 76-3-622 or public comment received pursuant to 76-3-604 on the information provided pursuant to 76-3-622 only if the conditional approval or denial is based on existing subdivision, zoning, or other regulations that the governing body has the authority to enforce.~~

~~—(7) A governing body may not require as a condition of subdivision approval that a property owner waive a right to protest the creation of a special improvement district or a rural improvement district for capital improvement projects that does not identify the specific capital improvements for which protest is being waived. A waiver of a~~

right to protest may not be valid for a time period longer than 20 years after the date that the final subdivision plat is filed with the county clerk and recorder."

Section 8. Section 76-3-620, MCA, is amended to read:

"76-3-620. Review requirements -- written statement. In addition to the requirements of 76-3-604, and 76-3-609, and [section 1], following any decision by the governing body to deny or conditionally approve a proposed subdivision, the governing body shall, in accordance with the time limit established in 76-3-504(1)(r), prepare a written statement that must be provided to the applicant, that must be made available to the public, and that:

- (1) includes information regarding the appeal process for the denial or imposition of conditions;
- (2) identifies the regulations and statutes that are used in reaching the decision to deny or impose conditions and explains how they apply to the decision to deny or impose conditions;
- (3) provides the facts and conclusions that the governing body relied upon in making its decision to deny or impose conditions and references documents, testimony, or other materials that form the basis of the decision; and
- (4) provides the conditions that apply to the preliminary plat approval and that must be satisfied before the final plat may be approved."

Section 9. Section 76-3-621, MCA, is amended to read:

"76-3-621. Park dedication requirement. (1) Except as provided in 76-3-509 or subsections (2), (3), and (6) through (9) of this section, a subdivider shall dedicate to the governing body a cash or land donation equal to:

- (a) 11% of the area of the land proposed to be subdivided into parcels of one-half acre or smaller;
- (b) 7.5% of the area of the land proposed to be subdivided into parcels larger than one-half acre and not larger than 1 acre;
- (c) 5% of the area of the land proposed to be subdivided into parcels larger than 1 acre and not larger than 3 acres; and
- (d) 2.5% of the area of the land proposed to be subdivided into parcels larger than 3 acres and not larger than 5 acres.

(2) When a subdivision is located totally within an area for which density requirements have been adopted pursuant to a growth policy under chapter 1 or pursuant to zoning regulations under chapter 2, the governing body may establish park dedication requirements based on the community need for parks and the development

densities identified in the growth policy or regulations. Park dedication requirements established under this subsection are in lieu of those provided in subsection (1) and may not exceed 0.03 acres per dwelling unit.

(3) A park dedication may not be required for:

(a) land proposed for subdivision into parcels larger than 5 acres;

(b) subdivision into parcels that are all nonresidential;

(c) a subdivision in which parcels are not created, except when that subdivision provides permanent multiple spaces for recreational camping vehicles, mobile homes, or condominiums;

(d) a subdivision reviewed pursuant to [section 1];

~~(d)~~(e) a subdivision in which only one additional parcel is created; or

~~(e)~~(f) except as provided in subsection (8), a first minor subdivision from a tract of record as described in 76-3-609(2).

(4) The governing body, in consultation with the subdivider and the planning board or park board that has jurisdiction, may determine suitable locations for parks and playgrounds and, giving due weight and consideration to the expressed preference of the subdivider, may determine whether the park dedication must be a land donation, cash donation, or a combination of both. When a combination of land donation and cash donation is required, the cash donation may not exceed the proportional amount not covered by the land donation.

(5) (a) In accordance with the provisions of subsections (5)(b) and (5)(c), the governing body shall use the dedicated money or land for development, acquisition, or maintenance of parks to serve the subdivision.

(b) The governing body may use the dedicated money to acquire, develop, or maintain, within its jurisdiction, parks or recreational areas or for the purchase of public open space or conservation easements only if:

(i) the park, recreational area, open space, or conservation easement is within a reasonably close proximity to the proposed subdivision; and

(ii) the governing body has formally adopted a park plan that establishes the needs and procedures for use of the money.

(c) The governing body may not use more than 50% of the dedicated money for park maintenance.

(6) The local governing body shall waive the park dedication requirement if:

(a) (i) the preliminary plat provides for a planned unit development or other development with land permanently set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the development; and

(ii) the area of the land and any improvements set aside for park and recreational purposes equals or exceeds the area of the dedication required under subsection (1);

(b) (i) the preliminary plat provides long-term protection of critical wildlife habitat; cultural, historical, or natural resources; agricultural interests; or aesthetic values; and

(ii) the area of the land proposed to be subdivided, by virtue of providing long-term protection provided for in subsection (6)(b)(i), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1);

(c) the area of the land proposed to be subdivided, by virtue of a combination of the provisions of subsections (6)(a) and (6)(b), is reduced by an amount equal to or exceeding the area of the dedication required under subsection (1); or

(d) (i) the subdivider provides for land outside of the subdivision to be set aside for park and recreational uses sufficient to meet the needs of the persons who will ultimately reside in the subdivision; and

(ii) the area of the land and any improvements set aside for park and recreational uses equals or exceeds the area of dedication required under subsection (1).

(7) The local governing body may waive the park dedication requirement if:

(a) the subdivider provides land outside the subdivision that affords long-term protection of critical wildlife habitat, cultural, historical, or natural resources, agricultural interests, or aesthetic values; and

(b) the area of the land to be subject to long-term protection, as provided in subsection (7)(a), equals or exceeds the area of the dedication required under subsection (1).

(8) (a) A local governing body may, at its discretion, require a park dedication for:

(i) a subsequent minor subdivision as described in 76-3-609(3); or

(ii) a first minor subdivision from a tract of record as described in 76-3-609(2) if:

(A) the subdivision plat indicates development of condominiums or other multifamily housing;

(B) zoning regulations permit condominiums or other multifamily housing; or

(C) any of the lots are located within the boundaries of a municipality.

(b) A local governing body that chooses to require a park dedication shall specify in regulations the circumstances under which a park dedication will be required.

(9) Subject to the approval of the local governing body and acceptance by the school district trustees, a subdivider may dedicate a land donation provided in subsection (1) to a school district, adequate to be used for school facilities or buildings.

(10) For the purposes of this section:

(a) "cash donation" is the fair market value of the unsubdivided, unimproved land; and

(b) "dwelling unit" means a residential structure in which a person or persons reside.

(11) A land donation under this section may be inside or outside of the subdivision."

Section 10. Section 76-6-203, MCA, is amended to read:

"76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

- (1) ~~structures~~—construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;
- (2) ~~landfill~~—dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- (3) ~~vegetation~~—removal or destruction of trees, shrubs, or other vegetation;
- (4) ~~loam, gravel, etc.~~—excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;
- (5) ~~surface use~~—surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;
- (6) ~~acts detrimental to conservation~~—activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;
- (7) ~~subdivision of land~~—subdivision of land as defined in 76-3-103, and 76-3-104, ~~and 76-3-202~~;
- (8) ~~other acts~~—other acts or uses detrimental to such retention of land or water areas in their existing conditions."

Section 11. Section 76-7-203, MCA, is amended to read:

"76-7-203. Permissible easements. (1) An environmental control easement under this chapter may prohibit or limit the following activities or uses:

- (a) constructing or placing of buildings, camping trailers, housetrailers, mobile homes, roads, or other structures on or above the ground;
- (b) dumping or placing of soil, debris, or other wastes or substances as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;
- (c) removing or destroying trees, shrubs, or other vegetation or planting or allowing growth of specific types of vegetation, such as crops for human or animal consumption or undesirable vegetation;
- (d) excavating, dredging, or removing of gravel, soil, rock, or other materials or substances;

(e) using the surface of the land in a particular manner, such as for agricultural, residential, commercial, or industrial uses;

(f) subdividing the land, as described in 76-3-103, and 76-3-104, ~~and 76-3-202~~;

(g) disturbing soil caps, soil surfaces, berms, drainage structures, or other structures or other activities that may cause erosion or migration of hazardous wastes or substances at or from the environmental control site;

(h) drilling or using water wells for potable or nonpotable purposes;

(i) other activities or uses detrimental to or interfering with the remediation or cleanup of the environmental control site or detrimental to the preservation of remedial structures, measures, or technologies employed at the environmental control site; and

(j) other activities or uses that may result in a risk or threat to the public health, safety, or welfare or the environment.

(2) An environmental control easement under this chapter may include or require the following:

(a) maintenance of environmental control site remedial structures or other remedial measures, such as soil surfaces, soil caps, berms, fences, or drainage improvements;

(b) rights in the holder of the easement or others for continuing access to the site as necessary to implement, operate, maintain, and monitor remedial work and technologies, including operation and maintenance, and to ensure implementation and enforcement of the requirements, restrictions, and limitations specified in the easement instrument;

(c) prompt notification to the holder of the easement or others of transfers of all or any portion of an environmental control site or interest in the site or of any proposed changes in land use at the site;

(d) compliance with all requirements of any applicable governmental order;

(e) arrangements for indemnification or for reimbursement of any costs and expenses of the easement holder or others or other methods of allocating costs and expenses for remedial actions, operations and maintenance, or other activities on the environmental control site or with respect to the site;

(f) other obligations that any federal public entity or other public body having jurisdiction over the property determines are necessary to implement, ensure noninterference with, or ensure the protection of remedial work performed under a governmental order; or

(g) other obligations that are necessary or advisable to reduce or eliminate risks or threats to the public health, safety, or welfare or the environment at environmental control sites."

NEW SECTION. Section 12. Repealer. The following section of the Montana Code Annotated is repealed:

76-3-202. Exemption for structures on complying subdivided lands.

NEW SECTION. ~~SECTION 13. SAVING CLAUSE.~~ [THIS ACT] DOES NOT AFFECT RIGHTS AND DUTIES THAT

MATURED, PENALTIES THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

NEW SECTION. SECTION 13 GRANDFATHER CLAUSE. THE RENT OR LEASE OF BUILDINGS OR STRUCTURES OR PARTS OF BUILDINGS OR STRUCTURES THAT IS OCURING BEFORE [THE EFFECTIVE DATE OF THIS ACT] IS NOT SUBJECT TO THE PROVISIONS OF [THIS ACT].

NEW SECTION. Section 14. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 76, chapter 3, part 6, and the provisions of Title 76, chapter 3, part 6, apply to [section 1].

~~NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.~~

NEW SECTION. SECTION 15. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2011.